

**REMARKS/ARGUMENTS**

Claims 33-40 and 44-48 are present in this application. By this Amendment, claims 33, 38-40 and 44-47 have been amended, and claims 41-43 have been canceled. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

At the outset, Applicant extends his appreciation to Examiner Sorkin for his courtesy in conducting the interview with Applicant's representative on November 28, 2005. During the interview, Applicant's representative discussed the outstanding rejections over the cited Waters and Boyce patents and pointed out distinctions between the invention and the cited references. Applicant's representative proposed amendments to the claims to exemplify the distinguishing features discussed, and Examiner Sorkin conditionally agreed that the discussed features were indeed distinguishable from the applied references. Additional details from the interview are discussed below.

Claims 33-40, 45, 47 and 48 were rejected under 35 U.S.C. §112, second paragraph. By this Amendment, the uses of "impeller means" and "shaft means" have been deleted, and the claims have been carefully reviewed and amended to maintain proper antecedent basis. Withdrawal of the rejection is respectfully requested.

Claims 33-39, 41 and 43 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 2,930,596 to Waters. This rejection is respectfully traversed.

With reference to Fig. 1 in the Waters patent, Waters describes a lid 20 that is arranged in an interference fit within the opening of the container. In contrast, claim 33 defines an opening of the vessel having a rim with an outer periphery, wherein the lid is fitted over the outer periphery of the opening . . . . Moreover, and as discussed in detail during the interview, the blender jar assembly described in the Waters patent includes an impeller arranged on an arm that

extends downward from the lid so as to locate the impeller adjacent the base of the vessel during blending. Claim 33, however, recites that the vessel is disposed in an inverted position during blending, “wherein the container is configured such that the lid and impeller are lowermost and the base is uppermost in the inverted position . . . .” The container in Waters is not inverted for blending (because the blender is at the base), and if the assembly was inverted, the impeller would be uppermost, in contrast with the requirement of claim 33. Indeed, an impeller arranged uppermost when the vessel is inverted for blending is not conducive to effective blending.

Applicant thus respectfully submits that the rejection is misplaced.

With regard to dependent claims 34-39, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim. Claims 41 and 43 have been canceled.

Reconsideration and withdrawal of the rejection are thus respectfully requested.

Claims 33-35, 38, 39, 41, 43-45, 47 and 48 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,487,509 to Boyce. This rejection is respectfully traversed.

As discussed during the interview, claim 33 recites that the vessel is nestable with other vessels by virtue of its structure. The Office Action contends that the Boyce patent meets this feature of the invention providing that “the container [in Boyce] has a narrow end so as to be nestable.” It is clear, however, that it is not possible to nest the jug-type vessel of Boyce inside a corresponding jug of the same kind and configuration as the handle of an adjacent jug could not be received within the internal walls of a lower jug. During the interview, Examiner Sorkin acknowledged a distinction between the invention and the Boyce patent with regard to the extent to which the vessels are nestable. In this context, claim 33 has been amended to recite that the vessel is nestable with other vessels “of the same kind and configuration, one inside another such

that when nested the lower end of the nesting vessel is adjacent the lower end of a nested vessel.”

Support for this subject matter can be found in the drawings and in the specification at, for example, page 23, lines 10-14. During the interview, Examiner Sorkin agreed that with proper support in the specification, this structure is distinguishable from the Boyce patent.

The use of nestable vessels that can be stored and transported to a blending location in a nested stack, one inside another, as required by claim 33, has significant advantages, which are neither taught nor suggested in the references of record. The simple nature of such nestable containers reduces manufacturing costs, and the nestability significantly reduces the space required for storage and transportation. These nestable vessels may take the form of conventional cups as used in fast food industries for vending coffee, soft drinks, milkshakes and the like. The configuration of such vessels is well known to persons familiar with purchasing or vending such products. The nestable vessels are typically disposable and have a tapered body defining an upper opening, usually, but not exclusively having an outwardly directed rim or lip.

Claim 44 defines a blending apparatus for blending food product. Claim 44 has been amended to require that the assembly includes a holder for the vessel, the holder having an annular inner wall configured for receiving the vessel so as to circumscribe the outer wall of the vessel, where the vessel is mounted in the holder and inverted during use. An example of such a holder is shown in Figs. 19-21 of the present application. Of course, other configurations are within the spirit and scope of the invention. The Boyce patent lacks any such holder, and Applicant submits that the handle in the Boyce apparatus would prevent the use of such a holder. Applicant thus respectfully submits that the rejection of claim 44 is misplaced.

Claim 47 has been amended to define the extent of nesting among vessels similar to that in claim 33. In particular, claim 47 recites that the vessel is nestable with other vessels “of the

same kind and configuration, one inside another such that when nested a base of the nesting vessel is adjacent a base of a nested vessel.” As discussed above, the jug-type container in Boyce lacks this feature of the invention.

Claim 47 also requires “an adapter separate from the vessel, the lid and the support for interconnecting the impeller and the drive means, the adapter including a coupling drivingly engageable at one end with the blending means and at the opposite end with the drive means.” The Office Action contends that this feature is present in the Boyce assembly, referring to the drive connector 112 in Fig. 3. However, the drive dog is wholly removed from the adapter of claim 47. Firstly, the drive connector 112 is permanently united with a support base 18 and therefore at best corresponds to the drive means recited in claim 47. As such, the drive connector 112 cannot be referred to as the adapter, since it is not “separate from . . . the support,” as required by claim 47.

A purpose of the adapter in claim 47 is to enable a conventional blender base unit (e.g., a unit housing a rotatable drive member/connector/means mounted on a support) to be used in combination with the Applicant’s container and lid assembly (see the description of Fig. 21 in the present application). This is of particular advantage in enabling the assembly to utilize a container in the form of a conventional milkshake, ice cream or coffee cup of the kind known to persons familiar with fast-food type vending outlets. Boyce is silent as to providing such a feature as an auxiliary fitting between the drive connector 112 on the support base 18 and the lid 14 of the vessel 12. Indeed, there is no suggestion of any need to modify the assembly illustrated in Boyce for use with any other kind of vessel other than the jug-type container illustrated in the figures.

For at least these reasons, Applicant submits that the rejection of claim 47 is also misplaced.

With regard to the dependent claims, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 40 and 42 were rejected under 35 U.S.C. §103(a) over Waters in view of U.S. Patent No. 4,722,608 to Salzman. Additionally, claims 40 and 42 were rejected under 35 U.S.C. §103(a) over Boyce in view of Salzman, and claim 46 was rejected under 35 U.S.C. §103(a) over Boyce in view of U.S. Patent No. 4,741,174 to Uesaka. These additional references, however, do not correct the deficiencies noted above with regard to Waters and Boyce. That is, none of Waters, Boyce or the additional secondary references provides any suggestion to modify the Waters or Boyce patents, respectively, to meet the features of the claimed invention. As such, Applicant respectfully submits that these dependent claims are allowable at least by virtue of their dependency on an allowable independent claim. Withdrawal of the rejections is respectfully requested.

Claims 33-45, 47 and 48 were rejected under the judicially created doctrine of obviousness-type double patenting over the claims of U.S. Patent No. 6,854,875. Additionally, claim 46 was rejected under the judicially created doctrine of obviousness-type double patenting over the claims of the '875 patent in view of Uesaka. Without conceding these rejections, filed concurrently herewith is a Terminal Disclaimer disclaiming the term of a patent granted herein that would extend beyond that of the '875 patent. Withdrawal of the rejections is thus respectfully requested.


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In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

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